

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ARCELORMITTAL PLATE LLC, et al.,

Plaintiffs,

v.

LAPEER INDUSTRIES, INC., et al.,

Defendants.

Case No. 19-13527-LVP-APP

Hon. Linda V. Parker

Mag. Anthony P. Patti

HOWMARK, LLC,

Third-Party Plaintiffs,

v.

DANIEL SCHREIBER, et al.,

Third-Party Defendants.

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**PLAINTIFFS' COMBINED MOTION TO COMPEL DISCOVERY
AGAINST DEFENDANTS BRENTWOOD, S&S HOLDINGS
AND CERTAIN NON-PARTIES**

Plaintiffs ArcelorMittal Plate LLC and ArcelorMittal USA LLC (collectively “ArcelorMittal”), by and through their counsel, move for an order compelling Defendants Brentwood Advisory Group, LLC (“Brentwood”) and S&S Holdings, LLC (“S&S Holdings”) to respond and produce documents and information responsive to ArcelorMittal’s Second and Third Sets of Requests for Production. ArcelorMittal also moves for an order compelling non-parties S&S Holdings Two, LLC (“S&S Two”), Schreiber Holdings, LLC (“Schreiber Holdings”), SS&F Properties, LLC (“SS&F Properties”) and JF Machines, LLC (“JF Machines”) (collectively “Subpoenaed Parties”) to respond and produce documents and information responsive to the subpoenas issued to them by ArcelorMittal.

ArcelorMittal has notified S&S Holdings, Brentwood and the Subpoenaed Parties, through counsel, of their failure to timely respond to ArcelorMittal’s

discovery. Despite numerous e-mails exchanges, ArcelorMittal has only received vague assurances of forthcoming responses that have not materialized. The reasons and authorities in support of this motion are set forth in the accompanying memorandum of law.

In accordance with Local Rule 7.1, the undersigned counsel for ArcelorMittal informed counsel for Brentwood, S&S Holdings and the Subpoenaed Parties of its intention to file this Motion and whether it concurred with the relief sought. Opposing counsel responded, but has either failed to provide a date upon which ArcelorMittal will receive responses to its outstanding discovery requests or produce responses to ArcelorMittal's discovery as promised.

WHEREFORE, ArcelorMittal requests that this Court enter an order granting its motion in its entirety; compelling (1) Brentwood to serve written responses and produce documents responsive to ArcelorMittal's Second and Third Sets of Requests for Production, (2) S&S Holdings to serve written responses and produce documents responsive to ArcelorMittal's Second Set of Requests for Production, and (3) the Subpoenaed Parties to serve written responses and produce documents responsive to the subpoenas issued to them by ArcelorMittal; and granting ArcelorMittal additional relief that this Court deems just and appropriate.

Dated: August 26, 2020

Respectfully submitted,

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**PLAINTIFFS' BRIEF IN SUPPORT OF THEIR COMBINED MOTION TO
COMPEL DISCOVERY AGAINST DEFENDANTS BRENTWOOD, S&S
HOLDINGS AND CERTAIN NON-PARTIES**

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STATEMENT OF ISSUES PRESENTED

1. Should Defendant Brentwood Advisory Group, LLC serve written responses and produce documents responsive to ArcelorMittal's Second and Third Sets of Requests for Production to Brentwood?¹

Plaintiffs' Response: Yes.

2. Should Defendant S&S Holdings, LLC serve written responses and produce documents responsive to ArcelorMittal's Second Set of Requests for Production to S&S Holdings?

Plaintiffs' Response: Yes.

3. Should non-parties &S Holdings Two, LLC, Schreiber Holdings, LLC, SS&F Properties, LLC and JF Machines, LLC serve written responses and produce documents responsive to the subpoenas issued to them by ArcelorMittal?

Plaintiffs' Response: Yes.

¹ Shortly before this filing, Brentwood served its written responses to ArcelorMittal's Second Set of Requests for Production along with certain documents. ArcelorMittal is currently reviewing Brentwood's responses and production and reserves its right to address any deficiencies therein.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

1. Fed. R. Civ. P. 26.
2. Fed. R. Civ. P. 37.
3. Fed. R. Civ. P. 45.
4. *Cahoo v. SAS Inst. Inc.*, 377 F. Supp. 3d 769 (E.D. Mich. 2019).
5. *Alden Park, LLC v. Anglo Irish Bank Corp., PLC*, No. 08-12116, 2008 WL 4642336 (E.D. Mich. Oct. 17, 2008).

INTRODUCTION

Defendants Brentwood Advisory Group, LLC (“Brentwood”) and S&S Holdings, LLC (“S&S Holdings”) continue to neglect their discovery obligations. Indeed, Brentwood and S&S Holdings have engaged in a pattern of providing untimely and incomplete discovery in this action. Despite multiple communications with counsel for Brentwood and S&S Holdings, they simply refuse to serve timely discovery responses. Worse yet, Brentwood and S&S Holdings have either failed to provide a timeframe by which they will respond to discovery by Plaintiffs ArcelorMittal Plate LLC and ArcelorMittal USA LLC (collectively “ArcelorMittal”) or failed to provide responses by the date they have so indicated.

Counsel for Brentwood and S&S Holdings has accepted service of certain subpoenas for documents on behalf of non-parties S&S Holdings Two, LLC (“S&S Two”), Schreiber Holdings, LLC (“Schreiber Holdings”), SS&F Properties, LLC (“SS&F Properties”) and JF Machines, LLC (“JF Machines”) (collectively “Subpoenaed Parties”). Similar to Brentwood and S&S Holdings, the Subpoenaed Parties’ responses to the subpoenas are over a month past due. Again, counsel for the Subpoenaed Parties has not advanced a meritorious reason for this delay.

This complete disregard for timeliness has prevented ArcelorMittal from preparing its case, including delays in taking depositions until the requested

materials are produced. These delinquent parties cannot continue to flout discovery deadlines. Accordingly, this Court should grant ArcelorMittal's motion to compel.

BACKGROUND

ArcelorMittal served its Second Set of Requests of Production on S&S Holdings and Brentwood on June 18, 2020. *See* Exs. A, B. Responses to these requests were due on July 20, 2020. ArcelorMittal served its Third Set of Requests for Production on Brentwood on July 2, 2020. *See* Ex. C. Brentwood's responses were due on August 3, 2020.

On June 19, 2020, ArcelorMittal served subpoenas for documents with a return date of July 17, 2020 to non-parties S&S Two, Schreiber Holdings and SS&F. *See* Exs. D-F. Third-Party Defendant Daniel Schreiber, represented by the Winegarden firm in this litigation, owns and controls these entities as well as JF Machines. Accordingly, counsel for ArcelorMittal asked counsel for Third-Party Defendant Daniel Schreiber to accept service of these subpoenas. *See* Ex. G. Counsel represented that she had the authority to accept service of these subpoenas. *Id.* She similarly agreed to accept service of the subpoena to JF Machines that ArcelorMittal issued on June 30, 2020 and had a return date of July 27, 2020. *See* Exs. H, I.

Based on discovery to-date, ArcelorMittal is of the belief that the Subpoenaed Parties are likely to have information and documents relevant to its claims, particularly its fraudulent transfer claims against Brentwood and Defendants

Howmark, LLC (“Howmark”) and 290 McCormick, LLC (“290 McCormick”). Discovery indicates that the Subpoenaed Parties were involved in a series of transactions which resulted in (1) Defendant 290 McCormick purchasing certain properties in Lapeer, Michigan (known as “Plant 2” and “Plant 3”) and equipment used in the operations of Defendant, now bankruptcy debtor, Lapeer Industries, Inc. (“Lapeer”) and (2) Third-Party Defendant Daniel Schreiber becoming the sole member of certain entities, including Brentwood, S&S Holdings, S&S Two and JF Machines. *See* Dkt. 89 at 6-7, Exs. 6-7. ArcelorMittal seeks, among other things, certain financial documents and loan agreements from the Subpoenaed Parties which can provide information germane to ArcelorMittal’s fraudulent transfer claims.

Responses to ArcelorMittal’s discovery to Brentwood, S&S Holdings and the Subpoenaed Parties are at least a month past due. Neither Brentwood, S&S Holdings, nor the Subpoenaed Parties have responded *at all*. Requests to counsel for updates on her clients’ discovery responses have been met with vague references to “waiting for [her] client to issue final approval.” *See* Ex. J. ArcelorMittal cannot wait forever and has deadlines in the Court’s scheduling order with which it must comply.

On August 18, 2020 and August 19, 2020, ArcelorMittal’s counsel contacted the Court to request a telephone conference to address these discovery deficiencies, and, in response, the Court allowed ArcelorMittal to proceed with this motion.

LEGAL STANDARD

A party may obtain discovery relevant to the parties' claims and defenses and proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). If a party fails to respond to discovery, including if that party's discovery response is evasive or incomplete, the requesting party may move for an order compelling discovery. Fed. R. Civ. P. 37(a)(1)-(4). Indeed, district courts in the Sixth Circuit generally "compel[] production of information 'that is relevant to any party's claim or defense and proportional to the needs of the case.'" *Cahoo v. SAS Inst. Inc.*, 377 F. Supp. 3d 769, 774 (E.D. Mich. 2019) *citing* Fed. R. Civ. P. 26(b)(1). The Federal Rules impose specific discovery obligations on litigants, which they are expected to fulfill. *Grange Mut. Cas. Co. v. Mack*, 270 F. App'x 372, 378 (6th Cir. 2008) (noting that "[o]ur civil legal system hinges on voluntary discovery.")

Pursuant to Fed. R. Civ. P. 45(a), a party may serve a subpoena on a non-party commanding the party produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control. *In re Elcommerce.com, Inc.*, No. 10-51396, 2011 WL 237619, at *2 (E.D. Mich. Jan. 24, 2011); *see also Alden Park, LLC v. Anglo Irish Bank Corp., PLC*, No. 08-12116, 2008 WL 4642336, at *1 (E.D. Mich. Oct. 17, 2008) (granting motion to compel past due subpoena responses).

ARGUMENT

I. THE COURT SHOULD REQUIRE BRENTWOOD AND S&S HOLDINGS TO RESPOND TO REQUESTS FOR PRODUCTION.

Brentwood and S&S Holdings have completely failed to respond to requests for documents concerning their finances, loan obligations and their assets. *See* Exs. A-C. Brentwood's and S&S Holdings' financial information are relevant here. *First*, Brentwood's financial information is relevant to, among other things, ArcelorMittal's fraudulent transfer claim. ArcelorMittal is entitled to investigate whether Brentwood acted with an intent to defraud ArcelorMittal and other creditors. The requested documents could shed light on Brentwood's intent in transferring the at-issue property to Defendant 290 McCormick, whether Defendant 290 McCormick took the property in good faith, and Brentwood's financial condition both before and after the transfer. *Second*, Brentwood's and S&S Holdings' financial information are relevant to ArcelorMittal's breach of contract claims against them, namely whether they can satisfy their obligations under their respective guaranties.

Responses to ArcelorMittal's Second Set of Requests for Production to Brentwood and S&S Holdings and Third Set of Requests for Production to Brentwood were due on July 20, 2020 and August 3, 2020, respectively. Despite stating that it would provide its responses to ArcelorMittal's Second Set of Requests for Production by Monday, August 24, 2020 (*see* Ex K), Brentwood has not.

Additionally, counsel for Brentwood and S&S Holdings indicated that her client “is currently working” on Brentwood’s responses to ArcelorMittal’s Third Set of Requests for Production and S&S Holdings’ responses to ArcelorMittal Second Set of Requests for Production and “can[‘t] say [when] they will be ready.” *Id.* Brentwood and S&S Holdings simply have no valid excuse as to why their discovery responses are over a month past due. Accordingly, the Court should order Brentwood and S&S Holdings to serve responses and produce documents responsive to ArcelorMittal’s outstanding requests for production.

II. THE COURT SHOULD REQUIRE THE SUBPOENAED PARTIES TO RESPOND TO REQUESTS FOR PRODUCTION.

Similarly, the Subpoenaed Parties have completely failed to respond to requests for documents concerning their finances and loan obligations. *See* Exs. D-F, H. The information requested in the subpoenas is relevant to ArcelorMittal’s fraudulent transfer claims. Indeed, each of the Subpoenaed Parties were involved in the series of transactions resulting in Defendant 290 McCormick’s purchase of certain properties used in Lapeer’s operations, which is the subject of ArcelorMittal’s fraudulent conveyance claim. Furthermore, these subpoenas were properly served as counsel represented that she had authority and agreed to accept service on behalf of the Subpoenaed Parties. *See* Exs. G, I.

Despite having two months to respond², ArcelorMittal has not received any responses or documents from the Subpoenaed Parties. Nor has any of the Subpoenaed Parties offered a reasonable justification for this delay. Therefore, the Subpoenaed Parties should be compelled to produce documents responsive to ArcelorMittal's subpoenas.

CONCLUSION

For these reasons, ArcelorMittal requests that the Court grant its motion and enter an order compelling the following to occur within 7 days of this Court's ruling: that (1) Brentwood serve written responses and produce documents responsive to ArcelorMittal's Second and Third Sets of Requests for Production; (2) S&S Holdings serve written responses and produce documents responsive to ArcelorMittal's Second Set of Requests for Production; and (3) non-parties S&S Two, Schreiber Holdings, SS&F Properties, and JF Machines serve written responses and produce documents responsive to the subpoenas issued to them by ArcelorMittal.

² Counsel indicated that the Subpoenaed Parties will issue their respective responses and documents related to ArcelorMittal's subpoenas to them by August 26, 2020. Ex. K. As of this filing, ArcelorMittal has not received any responses or documents from the Subpoenaed Parties.

Dated: August 26, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2020 a copy of the foregoing **PLAINTIFFS' COMBINED MOTION TO COMPEL DISCOVERY AGAINST DEFENDANTS BRENTWOOD, S&S HOLDINGS AND CERTAIN NON-PARTIES** was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filings to all counsels of record.

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